



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 21, 1994

Mr. Edwin Matias  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR94-251

Dear Mr. Matias:

The City of San Antonio (the "city") received a request for an airport shuttle service proposal submitted in response to the city's Request for Proposal. The proposal, by Star Shuttle, was accepted by the city. The proposal has a notice stating that the document is a "trade secret" and confidential under the Open Records Act. Star Shuttle has also urged the city not to release the proposal because it contends the information is confidential. You have therefore asked this office to determine if the proposal is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 23508.

As provided by section 552.305 of the Open Records Act, this office provided Star Shuttle the opportunity to submit reasons as to why the information should be withheld. Star Shuttle stated that the information contains confidential financial information and trade secrets. Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information that is obtained from a person and made privileged or confidential by statute or judicial decision. Open Records Decision No. 592 (1991) at 2.

The information submitted to this office consists mainly of financial information. Star Shuttle has alleged that this is confidential financial information. In Open Records Decision No. 592 (1991), this office determined that commercial or financial information is excepted under section 552.110 only if it is privileged or confidential under the common-law or statutory law of Texas. This office is not aware of a statute that would make Star Shuttle's financial information confidential. There also is no protected common-law privacy interest in financial information about a business. Open Records Decision No. 192 (1978) at 4 (right of privacy protects the feelings of human beings, not property, business, or other monetary interests); see Open Records Decision No. 373

The proposal is therefore not excepted under the commercial or financial information branch of section 552.110.

Star Shuttle also asserts the proposal contains "trade secrets." The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S. W. 2d 763, 776 (Tex.), *cert denied*, 358 U.S. 898 (1958); *see* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is:

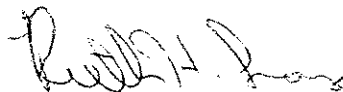
any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral events in the conduct of the business . . . . [It is] a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939).

This office has held that in situations where a governmental body takes no position with regard to the "trade secrets" branch of section 552.110, the private person's claim for the exception will be accepted if (1) the person makes a prima facie case for the exception and (2) no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6. However, Star Shuttle has not made such a prima facie case. Star Shuttle asserts that the proposal contains "trade secrets" but makes no specific argument as to how the information at issue would be a trade secret. This information is therefore not excepted under the trade secrets branch of section 552.110.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/SLG/rho

Ref.: ID# 23508, 25746

Enclosures: Submitted documents

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